THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11593 OF 2006

ORAL ORDER:

This writ petition is filed aggrieved by the action of the 2nd respondent in terminating the contract awarded to the petitioner for maintenance of pay and use toilets at Warangal Railway Station.

It is not in dispute that the petitioner, being the successful bidder in the open tenders, was awarded the contract in question for a period of five years commencing from 25.3.2005. Accordingly, an agreement dated 5.10.2005 was executed between the petitioner and the 2nd respondent, under which the petitioner agreed to maintain the pay and use toilets at Waragal Railway Station in accordance with the various terms and conditions stipulated thereunder. It appears that on the basis of certain news items published in the local dailies complaining about the poor maintenance of the pay and use toilets at Warangal Railway Station and also complaining that the petitioner was collecting excess charges, the contract awarded to the petitioner was terminated with effect from 28.10.2005. Questioning the same, the petitioner filed W.P.No.24537 of 2005, contending *inter alia,* that the said order was passed only on the basis of the press statement without giving any prior notice to the petitioner. Having found a *prima facie* case, this Court by order dated 17.11.2005 granted interim suspension of the order of termination dated 28.10.2005. However, this Court left it open to the respondents to take appropriate action following the principles of natural justice.

Thereafter, the petitioner was issued a show cause notice dated 28.4.2006 calling upon him to show cause as to why the contract should not be terminated on the allegation that the petitioner failed to observe the terms and conditions of the agreement dated 5.10.2005, apart from the fact that the petitioner was convicted by the Court of the Principal Special Judge for SPE and ACB cases-cum-IV Additional Chief Judge, Hyderabad, in a corruption case. In response to the same, the petitioner submitted his explanation dated 10.5.2006 denying the allegations made in the show cause notice. Having considered the same, the 2nd respondent under

the impugned proceedings dated 8.6.2006 terminated the contract in favour of the petitioner with immediate effect observing that the explanation offered by the petitioner was not satisfactory. Aggrieved by the same, this writ petition is filed.

The petitioner primarily contended that the action of the 2nd respondent in canceling the contract is vindictive, apart from being arbitrary and illegal. It is pointed out by the petitioner that the 2nd respondent earlier issued show cause notice dated 29.11.2005 with regard to the very same allegations mentioned in the show cause notice dated 28.4.2006. The petitioner submitted his detailed explanation dated 5.12.2005. Having received the same, the 2nd respondent kept quite for more than four months. The 2nd respondent even accepted the licence fee of Rs.49,073/- for the second year from the petitioner on 21.4.2006. The petitioner contends that having dropped the proceedings earlier, it is not open to the respondents to issue a fresh show cause notice on the very same allegations, which culminated in the impugned termination of the contract.

I have heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents and perused the material on record.

At the outset, it is to be noted that the contract in question is not governed by any statutory provisions, but the petitioner and the respondents are only bound by the terms and conditions of the agreement dated 5.10.2005, which is a voluntary act on the part of both the parties.

Clause 52 of the said agreement empowers the respondents to terminate the contract if the work is found to be unsatisfactory. In the case on hand, the petitioner was afforded an opportunity to meet the allegations of unsatisfactory performance of the contract in question, and after considering his explanation, the impugned order of termination of contract was passed. May be that the 2nd respondent issued a show cause notice earlier on the very same allegations. However, it cannot be taken that the proceedings were dropped since no such order was passed by the respondents at any time.

That apart, the agreement dated 5.10.2005 contains a specific clause of Arbitration in case any dispute arises between the parties out of the agreement. As per the said clause, the dispute shall be referred to the sole Arbitrator to be

appointed by the General Manager, South Central Railway, Secunderabad. It was also made clear that the provisions of the Arbitrator and Conciliation Act, 1996 shall be applicable to all the arbitrator proceedings.

In the light of the arbitration clause available under the agreement and keeping in view that the allegations made against the petitioner as regards improper maintenance of pay and use toilets in the Warangal Railway Station, which may require enquiry into several factual aspects, I am of the opinion that the petitioner cannot maintain the writ petition under Article 226 of the Constitution of India.

At any rate, as expressed above, since the dispute raised by the petitioner arises out of a concluded contract, the terms and conditions of which are not regulated by any Statute, even assuming that the impugned action is in breach of the terms and conditions of contract, no relief can be granted in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.

For the aforesaid reasons, the writ petition is dismissed. No costs. However, this shall not preclude the petitioner to work out appropriate remedy as available under law.

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(G. ROHINI, J.)

15th June, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11593 OF 2006

15th June, 2006.

Between:

B. Yellaswamy. .. Petitioner.

And

The General Manager,

South Central Railway,

Rail Nilayam, Secunderabad and

another. .. Respondents.